REMARKS

Applicants acknowledge receipt of the Examiner's Office Action dated January 9, 2008.

Claims 1-25 are pending in the application.

Claims 1-25 have been rejected.

Claims 1 and 11-21 have been amended.

Claim 26 has been cancelled.

Claim Objections

Claims 17-20 are objected to because of the following informalities: page 2 of the present Office Action asserts that Claims 17-20 have improper dependencies. More specifically, Examiner asserts that Claim 17 should be dependent on Claim 16 and Claims 18-20 should be dependent on Claim 17. Applicants have made the amendments to Claims 17-20 as recommended by Examiner. Therefore, Applicants respectfully request for the objections to be withdrawn.

Examiner has objected to Claim 26 as being of improper dependent for failing to further limit the subject matter of the previous claim. Applicants have cancelled Claim 26, thus rendering the objection moot.

Claim Rejections under 35 U.S.C. §101

Claims 11-20 are rejected under 35 U.S.C. §101 because the claimed invention is purported to be directed to non-statutory subject matter. Applicants have amended Claims 11-15 to recite "a processor; an interconnect coupled to the processor; and a computer-readable storage medium coupled to the processor via the interconnect, the computer-readable storage medium further comprising computer-readable code, wherein when executed by the processor, the computer-readable code is configured for" performing the recited operations. Applicants' amendments clearly recite a statutory system.

Applicants have amended Claim 16 to include "a communications module to enable communications between the first and second clusters". Those with skill in the art will appreciate that any type of communications module (e.g., a network interface card, etc.) may be implemented to enable communications between the first and second clusters. Such a communication module is a not "software per se" and is considered statutory subject matter under 35 U.S.C. §101.

Claims 11-20, as are now amended, are not "software per se" and are considered statutory subject matter under 35 U.S.C. §101. Applicants respectfully request that the rejection be withdrawn.

Rejection of Claims under 35 U.S.C. § 112

Claims 1-25 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which application regards as the invention. More specifically, Examiner asserts on page 3 of the present Office Action that Claims 1, 2, 11, 16 and 21 include terms that are alleged to be unclear. After careful consideration of Examiner's remarks, Applicants respectfully traverse Examiner's rejection.

Referring to § 2173.04 of the MPEP, "[b]readth of a claim is not to be equated with indefiniteness." (citing In re Miller, 441 F.2d 689, 169 USPQ 597 (CCPA 1971)). Also, "[i]f the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. § 112, second paragraph". MPEP § 2173.04.

Regarding Claims 1, 11, 16, and 21, Examiner asserts that "Claim 1, lines 2 recites 'determining' it is unclear how the determining is performed (i.e. what is the basis of determining the quantity of resource? is there a predefined number already preset?)." Viewing the "determining whether a resource in a first cluster can be allocated to provide a quantity of the resource to an application" language in light of § 2173.04 of the MPEP, Applicants assert that the scope of the subject matter embraced by the claims may be broad, but is not unclear. For example, any suitable technique for determining the quantity of a resource may be utilized and

the language in Claims 1, 11, 16, and 21, in a definite manner, encompasses all those suitable techniques.

Still referring to Claims 1, 11, 16, and 21, Examiner asserts that "it is not clearly understood whether the 'enabling step' and 'restarting' are being performed or only either one of these steps are performed since line 5 recited 'at least one of' by line 7 indicated 'and'". Applicants have amended Claims 1, 11, 16, and 21 to clarify that the enabling and restarting steps are performed in response to "determining whether the first cluster can be reconfigured to provide the quantity of the resource to the application". If the first cluster can be reconfigured, the enabling step is performed. If the first cluster cannot be reconfigured, the restarting step is performed.

Regarding Claim 2, Examiner asserts that "it is unclear what is meant by business priority". Viewing the "selecting the application to be allocated the quantity of the resource from a plurality of applications in accordance with a business priority for the application" language in light of § 2173.04 of the MPEP, Applicants assert that the scope of the subject matter embraced by the claims may be broad, but are not unclear. Any suitable business priority may be utilized and the claim language of Claim 2, in a definite manner, encompasses all suitable business priorities.

Having traversed Examiner's rejections regarding Claims 1, 2, 11, 16, and 21, Applicants respectfully request that the rejection be withdrawn.

Rejection of Claims under 35 U.S.C. § 103

Claims 1, 2, 5-8, 11-12, 15-17, 20-22, and 25 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over Huang, U.S. Patent No. 6,212,562 ("Huang"), in view of Short et al., U.S. Patent No. 6,178,529 ("Short"). After careful consideration of Examiner's remarks, Applicants assert that Claims 1, 2, 5-8, 11-12, 15-17, 20-22, and 25, as are now amended, are patentable over the combination of Huang and Short in view of the arguments herein. Support for the amendments can be found in at least paragraphs [0044]-[0054] and Figure 2 of the present Specification.

Regarding exemplary Claim 1, nothing in the combination of Huang and Short discloses (or renders obvious) "if the first cluster cannot be reconfigured, restarting the application in a second cluster having a sufficient amount of the resource to provide the quantity of the resource

to the application, <u>wherein the second cluster comprises a second plurality of systems</u>", as recited in exemplary Claim 1. Examiner correctly asserts on page 5 of the present Office Action that "Huang does not specifically disclose restarting the application in a second cluster having a sufficient amount of the resource to provide the quantity of the resource to the application". However, Examiner asserts that col. 7, lines 38-43; and col. 8, lines 3-6 of Short discloses the recited element of exemplary Claim 1.

Col. 7, lines 38-43 of Short discloses: "To determine which system should take ownership of which groups, those systems capable of hosting the groups negotiate among themselves for ownership, based on system capabilities, current load, application feedback, and/or the group's system preference list". Col. 8, lines 3-6 of Short discloses "[a]lso, associated with each resource is a local restart policy, defining the desired action in the even that the resource cannot continue on the current system". Also, col. 5, lines 10, et al and col. 7, lines 25-27 of Short discloses the arbitration of systems within the same cluster.

As clearly shown, nothing in the cited passages of Short or the combination of Huang and Short disclose (or render obvious) the recited element of exemplary Claim 1. The combination of Huang and Short simply does not disclose multiple clusters, restarting an application in a second cluster, or anything that would disclose (or render obvious) the recited element of exemplary Claim 1. Also, the combination of Huang and Short teaches the failover between <u>systems in the same cluster</u>, <u>not</u> failover between systems in different clusters as claimed. Since the combination of Huang and Short does not disclose (or render obvious) each and every element of Claim 1, independent Claim 1, similar independent Claims 11, 16, and 21, and all dependent Claims are patentable over the combination of Huang and Short. Applicants respectfully request that the rejection be withdrawn.

Claims 3, 9, 10, 13, 18 and 23 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over Huang, in view of Short, as applied to claims 1, 11 and 21 above, and further in view of Trossman et al., U.S. Patent No. 7,308,687 ("Trossman"). The introduction of Trossman to the combination of Huang and Short does not affect the patentability of independent Claims 1, 11, 16, and 21. Further, Claims 3, 9, 10, 13, 18, and 23 are patentable due to the virtue of their dependency on independent Claims 1, 11, 16, and 21 in view of the aforementioned arguments. Applicants respectfully request that the rejection be withdrawn.

Claims 4, 14, 19, and 24 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over Huang, in view of Short, as applied to claims 1, 11 and 21 above, and further in view of Fong et al., U.S. Patent No. 6,366,945 ("Fong"). The introduction of Fong to the combination of Huang and Short does not affect the patentability of independent Claims 1, 11, 16, and 21. Further, Claims 4, 14, 19, and 24 are patentable due to the virtue of their dependency on independent Claims 1, 11, 16, and 21 in view of the aforementioned arguments. Applicants respectfully request that the rejection be withdrawn.

CONCLUSION

Applicants submit that all claims are now in condition for allowance, and an early notice to that effect is earnestly solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is requested to telephone the undersigned.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to deposit account 502306.

Respectfully submitted,

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